STATE OF MICHIGAN

MICHIGAN SUPREME COURT

MATTHEW DYE, by his Guardian SIPORIN & ASSOCIATES, INC.,

Plaintiff-Appellee/Cross Plaintiff-Appellant,

-vs-

PRIORITY HEALTH,

Defendant/Cross Plaintiff-Appellee,

-vs-

GEICO INDEMNITY COMPANY,

Defendant/Cross-Defendant-Appellant,

and

ESURANCE PROPERTY & CASUALTY INSURANCE COMPANY,

Defendant/Cross Defendant-Appellee,

-and-

BLUE CROSS BLUE SHIELD OF MICHIGAN

Defendant-Appellee.

Supreme Court No. 155784

COA Docket No. 330308

Lower Court No. 14-516-NF

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APPLICATION FOR LEAVE TO APPEAL BY CROSS APPELLANT PLAINTIFF/APPELLEE MATTHEW DYE, BY HIS GUARDIAN, SIPORIN & ASSOCIATES, INC.

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STATEMENT IDENTIFYING THE JUDGMENT APPEALED THE BASIS OF THE APPEAL AND THE RELIEF SOUGHT

Matthew Dye, through his Guardian, is seeking leave to appeal from the April 4, 2017 Opinion of the Court of Appeals, *Dye v Esurance Property and Casualty Ins. Co.*, an unpublished Opinion per curiam, Docket No. 330308. The Opinion is attached as **Appendix Exhibit A**.

One issue has wide spread implications and effects many Michigan families. The issue was raised in the Trial Court and in the Court of Appeals by the Plaintiff-Cross/Appellant, Matthew Dye. The Plaintiff-Cross/Appellant Matthew Dye claims that the statutory interpretation in the case of *Barnes v Farmers Ins. Exchange*, 308 Mich App 1, 862 NW2d 682 (2014) was wrongly decided. Essentially, the *Barnes* case declares that unless an owner has a policy of insurance on the vehicle, the vehicle is uninsured as to any owner even if there is a no fault policy on the vehicle. The two statutes relied upon by *Barnes* are in relevant parts as follows:

> The no fault statute, MCL 500.3101(1), in relevant part provides:
>
> "The owner or registrant of a motor vehicle required to be registered in the state shall maintain security for payment of benefits under personal protection insurance, property protection insurance, and residual liability insurance . . . "
>
> MCL 500.3113 provides:
>
> "Sec. 3113.
>
> A person is not entitled to be paid personal protection insurance benefits for accidental bodily injury if at the time of the accident any of the following circumstances existed . . .
>
> (b) The person was the owner or registrant of a motor vehicle or motorcycle involved in the accident with respect to which the security required by section

3101 or 3103 was not in effect . . ."

The *Barnes* decision held a vehicle is uninsured, even if the vehicle has no fault insurance where the insurance policy does not have an owner as the named insured. The problem with this ruling is that the literal reading of the statute merely requires that the owner maintain (keep, continue) no fault insurance on the vehicle. The statute does not mandate that an owner has to be a named insured as declared by *Barnes*. The *Barnes* decision adds to the statute the requirement that the policy not only has to be on the vehicle but that an owner must be a named insured. The problem with this analysis is that many adult children who are the owners of a car but have the policy under the parents insurance plan or the parents pay for the insurance, those children according to *Barnes* are driving a vehicle that the parents paid for no fault coverage but they have no insurance coverage based on *Barnes* erroneous statutory interpretation. This factual situation is very common and I suspect members within the Court or its staff have done the same thing insuring a child under a parents auto policy without realizing that under this *Barnes* decision that the child has an uninsured vehicle even though the vehicle has insurance. That issue was raised in the Trial Court and the Court of Appeals and needs to be remedied by the Supreme Court to avoid many family members doing the right thing by buying auto insurance but because their child is not a named insured on the policy being considered to be uninsured and barred from no fault coverage. Furthermore, since the vehicle is uninsured, the child cannot sue in a third party lawsuit for pain and suffering recovery under the no fault statute. The *Barnes* decision was textually erroneous and will lead to tremendous hardship and inappropriate exclusion of no fault coverage to family members doing the right thing.

This writer litigated the same issue in the Court of Appeals in 2011 and resulted in an unpublished decision in the case of *Beaudette v Auto-Owners Ins. Co.*, Michigan Court of Appeals unpublished Opinion, Docket No. 295939, decided May 10, 2011 in a per curiam Opinion in which Justice Wilder was a participant. The *Beaudette* case followed the holding in the case of *Iqbal v Bristol West Ins. Co.*, 278 Mich App, 748 NW2d 574 (2008), which held that if the vehicle has a no fault policy in effect it is not an uninsured vehicle. In that case, it was held that if the vehicle had insurance the no fault statute was satisfied. *Beaudette* and *Iqbal* did not require that the vehicle's owner obtain the insurance coverage. Unfortunately, *Beaudette* was an unpublished Opinion, but directly contrary to the *Barnes* decision.

Because the Court of Appeals in this case was bound by *Barnes*, the Appeals Court also looked at some factual arguments avoiding the consequences of *Barnes*. The Plaintiff claimed in the lower Court if *Barnes* is valid, under the facts of the case that the father who bought the insurance was an owner or registrant. In this case the father who bought the insurance and registered the vehicle with a Power of Attorney for his son was either a registrant or an owner of the vehicle. There was a wealth of deposition testimony summarized in that Statement of Facts on the ownership issue. The father, Paul Dye, had the right to use the vehicle as testified to by all three family members. Under no fault case law that was sufficient to be an owner if he had the right to use the vehicle. *Twichel v MIC Gen Ins. Corp.*, 469 Mich 524, 534-535, 676 NW2d 616, 620 (2004). The Trial Court agreed. The Trial Court also agreed that since the father was the actual registrant of the vehicle (with a Power of Attorney) that he was a registrant as well.

The two member of the Dye Court of Appeals' panel below held that there was a

question of fact as to the father's ownership and remand the case for trial on the ownership issue and damages.

Lastly, the Trial Court had found that there was an agreement by GEICO admitting liability. The Trial Court ordered trial as to damages only by the written agreements of GEICO's counsel as to liability. GEICO's counsel in writing to Plaintiff's counsel, **Appendix Exhibit H**, and Esurance documents conceded coverage and priority and agreed that GEICO would be the no fault insurer until after the *Barnes* decision was issued as a published decision. After *Barnes* was published, GEICO immediately changed their position. The Trial Court held that on the question of liability and coverage, GEICO had an admission by their attorney in writing admitting they were the responsible no fault insurer. The Trial Court ordered that only question remaining was the amount of damages for trial. The Court of Appeals concluded that there was no agreement and did not address the admission of liability only issue briefed by Plaintiff's counsel. The Court of Appeals focused on Esurance's argument that coverage and damages were resolved as to Esurance's claim.

It is respectfully urged that this Court grant leave to appeal and reverse the *Barnes* decision holding that as long as the vehicle has the required no fault insurance that the vehicle is insured and the owner is not barred from no fault benefits under MCL 500.3113(b). In addition, or in the alternative, that this Court find that GEICO's agreement as to liability was an admission under court rule in writing and that the Trial Court properly granted summary judgment on liability and ordered the matter to trial as to damages only.

PLAINTIFF AND CROSS/APPELLANT'S STATEMENT OF QUESTIONS PRESENTED

I.

THE FATHER BOUGHT INSURANCE AND REGISTERED THE CAR OWNED BY HIS SON. THE COURT OF APPEALS FOLLOWED THE STATUTORY INTERPRETATION IN *BARNES V FARMERS INS.*, AND HELD THAT BECAUSE AN OWNER WAS NOT A NAMED INSURED ON THE POLICY, THE VEHICLE IS UNINSURED BY AN OWNER AND THE SON IS BARRED FROM RECOVERING NO FAULT BENEFITS. HAS THE COURT OF APPEALS MISINTERPRETED MCL 3113(b) IN HOLDING THAT THE OWNER MUST HAVE A POLICY OF INSURANCE ON THE CAR AND THAT A POLICY OF INSURANCE ON THE VEHICLE IS NOT SUFFICIENT?

> The Trial Court, because of the binding precedent of the *Barnes* decision, did not address this question, but the issue was raised.
>
> Similarly, in the Court of Appeals, the issue was raised and briefed. However, with the published decision, this panel adopted the *Barnes* interpretation that if an owner doesn't have no fault insurance, whether the vehicle is insured or not, the owner is barred from no fault benefits as an uninsured vehicle.

II.

IF *BARNES* IS UPHELD BY THIS COURT, WHETHER THE WRITTEN LETTER BY GEICO'S COUNSEL OF SEPTEMBER 2, 2014 [**APPENDIX EXHIBIT H**] AND GEICO'S COUNSEL'S CORRESPONDENCE TO ESURANCE'S COUNSEL WAS A BINDING ADMISSION ON LIABILITY UNDER MICHIGAN COURT RULE THAT GEICO WOULD BE THE INSURER FOR THE PAYMENT OF MATTHEW DYE'S NO FAULT EXPENSES AND THE ONLY ISSUE REMAINING WAS A TRIAL ON DAMAGES.

> The Trial Court answered this question, yes, there was a binding admission on liability and ordered the matter scheduled for trial only as to damages.
>
> The Court of Appeals concluded that there was no agreement because there was no meeting of minds and did not address the admission on liability only argument of Plaintiff's counsel, just the argument by Esurance that there was no binding agreement as to liability and damages.
>
> Plaintiff/Cross-Appellant Dye, respectfully urged that this Court find that GEICO's written agreement admitting liability to both counsel was a binding and enforceable agreement as to liability and that the Trial Court properly ordered the matter to trial as to damages only.

STATEMENT OF FACTS

Matthew Dye was born December 8, 1979. He is now 37 years old. Matthew was in the military, the National Guard, at the time of the accident. (Matt's deposition, P. 11, l. 2 to P. 15, L. 2). The depositions in the entirety are attached and will be referred to as Matt's deposition, **Appendix Exhibit K**, Paul's deposition, **Appendix Exhibit J**, and Lisa's deposition, **Appendix Exhibit L.** Matt came back from Afghanistan in August, 2011. (Lisa's deposition at P. 11, L. 25 to P. 12, L. 10, Matt's deposition P. 17, L. 1-2). Matt continued to be a member of the National Guard reporting for weekends and summer training up through the time of the accident on September 26, 2013. (Matt's deposition P. 12, L. 19 to P. 15, L. 2). As soon as Matt returned to Michigan he began working at a manufacturing plant in Saline and has worked there full time for two years up until the time of the accident. (Matt's deposition P. 20, L. 14 to 19). Matt and his father were very close. (Lisa's deposition P. 35, L. 22 to P. 36, L. 3). Matt relied upon his father to help him when he was in the military financially and legally and that continued after his deployment from Afghanistan back home. (Lisa's deposition P. 35, L. 22 to P. 36, L. 4; Matt's deposition P. 27-29). Paul, the father, had a Power of Attorney for all the years that Matt has been in the military up to the time of the accident. (Paul's deposition at P. 48, L. 2 to L. 25). For a short time when Matt returned from Afghanistan Matt lived with his father but then moved in with Lisa, (Paul's deposition P. 37, L. 5-8, Lisa's deposition P. 12, L. 5-10). At the time of the accident, Matt and Lisa lived about seven blocks from Matt's father. (Paul's deposition at P. 40, L. 16-17). When Matt came back from Afghanistan, his dad had already purchased him a Dodge Dakota truck and had bought insurance. (Paul's deposition at P. 33, L 6, P. 37, L. 4). On July 25, 2013, Matt decided to replace the Dodge Dakota and buy

from a co-worker a used BMW four wheel drive car and sell his truck. (Matt's deposition at P. 30-32, P. 37, L. 1-7). Matt asked his dad, with the Power of Attorney, to register the vehicle and to get insurance for it. (Paul's deposition, P. 18, L. 5 to P. 22, L. 10). Matt got married to Lisa on May 26, 2013. (Lisa's deposition P. 32, L. 10-12). Matt and Lisa moved to the Maple address, about seven blocks from Matt's father a couple of months before the collision. Matt's father, Paul, is medically retired from the Lenawee County Sheriff's Department suffering from MS which impacts him physically and well as his memory and cognitive abilities. (Paul deposition at P. 23, L. 20 to P. 25, L. 4). When Matt came back from Afghanistan, his father had paid for the insurance on the Dakota truck, secured the insurance, purchased the vehicle and helped Matt pay for the truck. (Paul's deposition at P. 35, L. 10 to P. 37, L. 4). The car involved in this accident was the used BMW. Because Paul had the Power of Attorney for his son. Paul went to the Secretary of State after Paul had gone online and purchased an insurance policy with Esurance on the BMW. When Paul was asked why he was the named insured rather than Matt, Paul could only say, "I don't remember what my intention was other than to get some insurance for the car." (Paul's deposition at P. 38, L. 21-25). His goal was to get insurance on the car so that his son could drive it. (Paul's deposition at P. 39, L. 11-16). Paul paid the premium for the insurance and signed the registration at the Secretary of State's office. (Paul's deposition P. 37, L. 20, P. 40, L. 11). Paul had no idea that when purchasing the insurance for Matt that Matt as an owner should be the named insured or both should be on the insured vehicle. (Paul's deposition at P. 42, L. 6-14).

Because of the *Barnes* decision saying that some owner must have insurance, the impact of the *Barnes* decision would be that if Matt was the sole owner, he would be barred

from Michigan no fault insurance benefits since the vehicle didn't have a policy of insurance by any owner of the vehicle. Even though the vehicle was insured by his dad, as the Brief will explain later, you can be an owner, not by having title or by the registration but by either access and use of the vehicle or the right to use the vehicle. In this case, the undisputed facts establish that the father and son regularly exchanged and shared vehicles. Paul had the right to use the vehicle if he wanted to for any purpose. (Paul deposition at pp. 46-47).

> "Q: Do you think that you had the right to use the vehicle that Matt purchased when he bought it as kind of a Dye fleet of vehicles?
>
> A: Yes.

Paul also explained that it was the reciprocal right for Matt to use his vehicle whenever he wanted. (Paul's deposition P. 47, L. 1 to P. 48, L.1). And the only reservation on exchange of vehicles was whether or not the vehicle was available. Paul said that as a matter of courtesy he would ask to use the vehicle but that he was able to use the vehicle as a matter of right. (Paul's deposition P. 46, L. 15-18). This accessibility of vehicles and kind of common ownership was the same practice that they had utilized on the Dakota truck and other prior family vehicles. Paul was the one that got the insurance from Esurance on the vehicle, Paul paid the insurance premium. Paul needed a Certificate of Insurance to get vehicles plates and then went to the Secretary of State with the Power of Attorney in order to register the vehicle and pay the registration fees. Paul was the actual signing registrant on the vehicle. Paul had assisted Matt for over five years while he was in the military in getting his insurance and handling his papers. (Paul's deposition at P. 50, L. 4-24). Paul's intention was to insure the vehicle regardless of whether he was driving it or anyone else was driving it. (Paul's

deposition P. 53, L. 5-7). Paul didn't recall driving the vehicle after it was purchased but he had the right to and Matt and his dad had freely used each other vehicles at will. (Paul's deposition at P. 56, L. 20-24). Similarly, the deposition testimony of Matt confirmed that the Dodge Dakota his father had registered and paid for the registration. On the Dakota truck Paul had paid for the insurance and secured the insurance. The trading of vehicles between Matt and his father simply depended on who needed what car.

Although Paul couldn't remember driving the BMW after it was purchased he did remember Matt borrowing his van but Paul quickly said he had the right to use the BMW. (Paul's deposition at P. 55, L. 6-17). Furthermore, both Matt and Lisa said that after the BMW was purchased, Paul had used the BMW. (Matt's deposition P. 70, L. 6-15 and Lisa's deposition at P. 22, L. 3 to P. 23, L. 12). Also, Lisa confirmed that over the five year period Matt and his father were very close. (Lisa's deposition P. 35, L. 22-24). Matt had relied on his father to help him financially when he was in the military and continued after the deployment. (Lisa's deposition P. 35, L. 22 to P. 36, L. 2). She described in the five years Matt and his dad had interchanged cars and vehicles at will, kind of a family Dye vehicle fleet. In fact, she describes the joking reference that Paul had a rule that one of them had to own a truck. (Lisa's deposition at P. 46, L. 20 to P. 48, L. 4). Paul took over handling of all of Matt's insurance matters when Matt was in the service and then when he came back Paul simply continued to do those things for his son since Paul was retired. (Lisa's deposition P. 47-48). Matt also described in his deposition that his dad had driven the BMW after it was purchased. (Matt's deposition P. 42, L. 15 to P. 43, L. 10). Matt testified his dad could use the BMW at his discretion. (Matt's deposition P. 42, L. 15 to P. 43, L. 6). When Matt was asked whether he

thought his dad was an owner of the car he explained this way:

> "However, I purchase it with my money and it was more then welcome to my father to use that vehicle because we used his vehicle and it was more than, you know, back and forth use and when you needed. So however specifically you asked, he is a part owner." (Matt's deposition at P. 47, L. 15-21).

At page 70 of his deposition Matt explained:

> "Q: Just so the record is clear, do you consider yourself, did you consider your dad an owner in terms of the right to use your BMW after you bought it?
>
> A: Yes.
>
> Q: And did he in fact use the vehicle at least on occasion?
>
> A: Yes.
>
> Q: As best you recall before the accident?
>
> A: Yes.
>
> Q: And was that a practice and a history, not just for this BMW or this lawsuit, but for vehicles in the past like the truck you had before the - -
>
> A: Yes.
>
> Q: - - Dakota.
>
> A: Yes." (Matthew deposition P. 70, L. 6-21).

Also, Matt also testified at page 71:

> "Q: Okay, so before this accident, if your dad wanted to use the truck or wanted to use the BMW, he had the right to use it if he wished.
>
> A: Yes.
>
> Q: Not in terms of paperwork but just in terms of the practical ownership, he would be one of the family members that would be an owner of that vehicle?

A: Yes. (Deposition P. 71, L. 21-25 and P. 72, L. 1-3).

The depositions are attached as exhibits but they are replete with confirmation from Lisa, Matt and Paul that they regularly exchanged vehicles, that Paul had the right to use the BMW and in fact had paid for the registration and the insurance on the vehicle. Whether it's MS or whether Paul simply didn't appreciate that Matt should be listed as insured clearly came out from these depositions. They thought they were buying insurance on a car and thought indeed they had insurance to only discover based on the *Barnes* decision that you have insurance but because no named insured is an owner, the vehicle is uninsured. In addition to the depositions, the title transfer papers and registration by Paul are attached as **Appendix Exhibit I.**

During the pendency of the lawsuit, GEICO, through their attorney, agreed to provide no fault coverage in writing both to Esurance and to Matthew Dye's counsel. To Matthew Dye's counsel a written letter confirming the coverage was issued on September 2, 2014, attached as **Appendix Exhibit H**. Also, in the Trial Court, Esurance's counsel provided in writing multiple writings by email correspondence where GEICO agreed to provide no fault coverage for Matthew Dye those documents are attached to Appellant Esurance's Application for Leave on that issue and within **Appendix Exhibit H**. GEICO was the highest priority insurer since Matthew Dye was not a named insured on the BMW involved in the collision, Matt would get his no fault benefits from his wife's policy with GEICO as a policy of his spouse, MCL 500.3114(1). In the Trial Court, the parties briefed the question of whether or not there was a written agreement by GEICO to provide coverage and be the insurer of highest priority based upon the written documentation. At the Motion for Summary Judgment hearing of October

2, 2015, attached as **Appendix Exhibit E**, the Trial Court considered the argument at pages 13-16 and concluded that by written agreement by GEICO they agreed to provide coverage and be the insurer of highest priority. The Trial Court concluded that GEICO's agreement was enforceable at pp. 16-17 of the Opinion. The Trial Court concluded that if there was a question about the amount of damages, that would not take away from the admission of coverage and priority leaving only the question of damages for a jury trial, (Trial Court Tr., p. 28, lines 12-20).

The Trial Court at the same Motion hearing considered whether Paul Dye was an owner and registrant. Since Paul Dye had access to the vehicle and the right to use it going forward as well as being the actual registrant of the vehicle, the Trial Court concluded that Paul Dye was an owner and registrant of the vehicle. (Tr., p. 27, lines 25-p. 28, line 11).

Thus, the Trial Court concluded that based upon the undisputed facts, Paul was a registrant and/or an owner for purposes of no fault coverage. The *Barnes* decision would not bar Matthew Dye from no fault coverage since the vehicle was not uninsured and an owner or registrant had the no fault insurance.

In the Court of Appeals, the Court of Appeals granted leave from the Trial Court order prior to the matter proceeding to trial as to damages. In the Court of Appeals in a two to one Opinion, the Court of Appeals cited the *Barnes* decision as binding precedent and then proceeded to evaluate the three factual issues that the Trial Court had granted summary judgment, namely, whether the father, Paul Dye, was an owner for purposes of no fault benefits. Whether Paul Dye, as the signatory on the vehicle registration and therefore a registrant for purposes of no fault coverage. Lastly, whether there was an agreement, either as to liability by GEICO or on the entire claim pursuant to the written admission supplied by

GEICO counsel to both Esurance's counsel and Plaintiff's counsel prior to the publication of the decision in the *Barnes* matter.

On the claimed admission of liability, the Court of Appeals concluded that there was no final agreement because the details of the agreement had not been finalized between the parties. However, the Court of Appeals did not address Plaintiff, Dye's contention that there was an agreement and admission on the question of liability and coverage, Plaintiff contended in the Trial Court and the Court of Appeals that GEICO had a binding admission on liability by their attorney prior to the *Barnes* decision. The Trial Court was correct in ordering the matter to trial only as to damages. As to the argument on liability, Plaintiff, Matthew Dye, Appellee in the Court of Appeals specifically cited and attached to the lower Court and the Court of Appeals, a written letter from GEICO's defense counsel confirming that they were the no fault insurer eliminating that issue for trial. (**Appendix Exhibit H**). On the arguments of ownership and registration, the Court of Appeals held that even though the father was the one who actually registered the vehicle, that he was not a registrant of the vehicle since he did so under a Power of Attorney. Secondly, the majority Opinion concluded that there was a question of fact as to whether Paul was an owner of the vehicle and remanded the matter to the Trial Court for trial on that issue and damages.

The Plaintiff raised the *Barnes* statutory interpretation error in the Trial Court and in the Court of Appeals. In the Trial Court, the challenge to the statutory interpretation of *Barnes* was raised by the Plaintiff in the Motion for Summary Disposition dated October 13, 2015. Throughout the Plaintiff's Motion for Summary Judgment, *Barnes* was criticized, but acknowledged in the Trial Court that it was a binding precedent. Also, in the oral argument

on that Motion, Plaintiff's counsel at page 19 to 22 of the Motion transcript specifically criticized the statutory interpretation of *Barnes*, but acknowledged the binding precedent in the Trial Court. The Trial Court therefore addressed the binding admission agreement arguments, ownership issues and registration arguments.

The challenge to the *Barnes* decision and its statutory interpretation was raised and briefed in the Court of Appeals issue number three of the Plaintiff, Matthew Dye's Appellee Brief and discussed in oral argument. However, the panel followed the *Barnes* decision.

If this Court upheld *Barnes* the factual issues upon this liability admission, ownership and registration issues either as a matter of law or as a question of fact, factually fall within the mandates of *Barnes*. It is urged that this Court remand for trial on the ownership fact issue and for trial as to damages.

At the conclusion of the Court of Appeals Opinion, two of the Judges remanded the matter to the Trial Court on the ownership issue. However, it is urged by Matthew Dye that this Court hold *Barnes* interpretation was wrongly decided. It is urged that this Court grant leave on the *Barnes* 3113(b) exclusion misinterpretation. Also, grant leave or summarily reverse and hold that GEICO, by written admission, is responsible for the payment of no fault benefits for Matthew Dye and the only remaining issue is a trial on damages to Matthew Dye and Esurance.

It is urged that this Court grant leave or grant summary relief.

ARGUMENT

I. THE TEXT OF MCL 500.3113(b) ONLY DISQUALIFIES AN OWNER IF "THE SECURITY REQUIRED BY SECTION 3101 WAS NOT IN EFFECT". IT DOES NOT REQUIRE THAT THE SECURITY BE PROVIDED BY AN OWNER. THEREFORE, IF "SECURITY FOR PAYMENT OF BENEFITS UNDER PERSONAL PROTECTION INSURANCE" IS IN EFFECT ON A VEHICLE, SECTION 3113(b) DOES NOT APPLY.

The decision in *Barnes v Farmers Ins Exchange*, 308 Mich App 1 (2014), held that even though a vehicle is covered under a policy providing no-fault insurance, an owner can be disqualified if he or another owner was not the person who purchased the insurance. That decision is not supported by the text of the statute. It is also the product of a flawed misreading of *Iqbal v Bristol West Ins Group*, 278 Mich App 31, 748 NW2d 574 (2008).

The Text of the Statute

> The statutory exclusion invoked by GEICO in the instant case reads as follows: "A person is not entitled to be paid personal protection insurance benefits for accidental bodily injury if at the time of the accident any of the following circumstances existed:"
>
> * * * *
>
> "(b) The person was the owner or registrant of a motor vehicle or motorcycle involved in the accident **with respect to which the security required by section 3101** or 3103 **was not in effect**."

MCL 500.3113(b) (emphasis added).

The "last antecedent" rule of statutory construction provides that a modifying word or clause is confined solely to the immediately preceding word or clause unless something in the statute requires a different interpretation. *Stanton v City of Battlecreek*, 466 Mich 611, 616, 647 NW2d 508 (2002). Application of that rule limits the emphasized phrase to modifying "motor vehicle or motorcycle", rather than "owner or registrant".

Otherwise stated, the terms of §3113(b) do **not** impose any obligation on the owner or registrant. The statute only specifies the conditions under which those persons are disqualified from benefits, i.e., when "the security required by section 3101 . . . was not in effect". Therefore, the next question is what is "the security required by section 3101"?

That provision reads in pertinent part as follows:

> "The owner or registrant of a motor vehicle required to be registered in this state shall maintain **security for payment of benefits under personal protection insurance**, property protection insurance, and residual liability insurance."

MCL 500.3101(1) (emphasis added).

In terms, that sentence does two things:

(1) It defines the "security required" by the Act; and

(2) It imposes on the "owner or registrant" the obligation to maintain it.

As demonstrated above, §3113(b) does not address the obligations of an "owner or registrant". Rather, it only identifies them as persons who are excluded if "the security required" is not in effect. Nor does §3113(b) reference **who** §3101(1) requires to obtain the security. It only references §3101(1)'s definition of "the security required".

That interpretation is underscored by the Act's enforcement mechanism against owners who permit their vehicles to be operated without the required security:

> "**An owner or registrant** of a motor vehicle or motorcycle with respect to which security is required, **who operates the motor vehicle** or motorcycle **or permits it to be operated** upon a public highway in this state, **without having in full force and effect security complying with** this section or **section 3101** or 3103 **is guilty of a misdemeanor**."

MCL 500.3102(2) (emphasis added).

Thus, applying the unambiguous text of §3113(b) does not create an anomaly by allowing owners or registrants to shirk their responsibility without consequence. Section 3101(2) fulfills that purpose by expressly linking the penalty to the owner or registrant's failure to have the security "in full force and effect".

On the other hand, §3113(b), in terms, provides an additional sanction of disqualification from benefits only if no one has paid into the no-fault system for the risk created by the operation of that motor vehicle.

In sum, §3102(2) enforces the primary responsibility imposed on owners or registrants by §3101(1). The focus is on who is responsible for procuring the security. In contrast, §3113(b) is concerned with the what, the security required to be in effect for the vehicle. Reading §3113(b) as doing anything more is not only contrary to its unambiguous language, it works gratuitous hardship in situations where its evident purpose -- to have vehicles insured -- has been satisfied.

The Case Law

In *Iqbal, supra,* the Court of Appeals interpreted §3113(b) consistent with the foregoing discussion. In that case, the plaintiff was injured in a motor vehicle accident while driving a vehicle titled to and insured by his brother. 278 Mich App at 33.

The insurer argued that the plaintiff was a statutorily defined owner of the vehicle, MCL 500.3101(k)(I) ("A person . . . having the use of a motor vehicle . . . for a period that is greater than 30 days"). The insurer argued that because the plaintiff did not maintain no-fault insurance on the vehicle, he was disqualified under §3113(b). Id.

The trial court concluded that whether the plaintiff was an owner was irrelevant,

because the vehicle was specifically insured by his brother. Id. The Court of Appeals affirmed. Its reasoning leaves no doubt that §3113(b) does not apply if there is no-fault insurance on the vehicle, regardless who purchased it:

> "As part of the process of construing MCL 500.3113(b), we shall make the assumption that plaintiff was an 'owner' of the BMW, as that term is defined in MCL 500.3101(2)(g)(i). Next, **the phrase 'with respect to which the security required by section 3101 . . . was not in effect,' section 3113(b)**, when read in proper grammatical context, **defines or modifies the preceding reference to the *motor vehicle involved in the accident*, here the BMW, and not the person standing in the shoes of an owner or registrant**. The statutory language links the required security of insurance **solely to the vehicle. Thus, the question becomes whether the BMW, and not plaintiff, had the coverage or security required by MCL 500.3101**. As indicated above, **the coverage mandated by MCL 500.3101(1) consists of 'personal protection insurance**, property protection insurance, and residual liability insurance.' **While plaintiff did not obtain this coverage, there is no dispute that the BMW had the coverage, and that is the only requirement under MCL 500.3113(b)**, making it irrelevant whether it was plaintiff's brother who procured the vehicle's coverage or plaintiff. Stated differently, **the security required by MCL 500.3101(1) was in effect for purposes of MCL 500.3113(b) as it related to the BMW**."

278 Mich App at 39-40 (italics in original) (other emphasis added).

That passage cannot rationally be construed to mean anything other than if there is a no-fault policy in effect on the vehicle, regardless who purchased it, §3113(b) does not apply. That is the reading adopted in an unpublished opinion subscribed by Justice Wilder during his tenure on the Court of Appeals.

In *Beaudette v Auto-Owners Ins Co*, unpublished per curiam opinion of the Court of Appeals, rel'd 5/10/11 (No. 295939) (**Appendix Exhibit C**), the plaintiff was injured in an accident while driving a motor vehicle titled in his name. It was insured under a policy purchased by his mother, who is the only named insured. (**Appendix Exhibit C**, p 1). The

Assigned Claims Facility insurer denied the claim, arguing that it was barred by §3113(b), because the plaintiff did not insure the vehicle. (Id.). The trial court rejected that argument.

The Court of Appeals affirmed, holding in pertinent part as follows:

> "Applying *Iqbal*'s holding here, MCL 500.3113(b) does not preclude Scott Beaudette's collection of PIP benefits because the Cadillac was insured, and **the provision does not require that Scott Beaudette be the person that obtained that coverage**. Therefore, under MCL 500.3113(b) and case law interpreting that provision, Scott Beaudette is not precluded from collecting PIP benefits simply because he did not personally maintain insurance on the vehicle." (**Appendix Exhibit C**, p. 9, emphasis added).

The Court of Appeals reached an opposite result in *Barnes*. In that case, the plaintiff was injured in an accident while driving a vehicle titled in her name. The plaintiff paid a friend to purchase insurance on the vehicle. The friend did so, but was the only named insured on the policy. 308 Mich App at 3. The trial court ruled that the plaintiff's claim was barred by §3113(b). Id. at 4-5.

The Court of Appeals affirmed. The panel interpreted *Iqbal* as holding only that all owners need not purchase separate policies. The *Barnes* panel quoted the same passage quoted above in this discussion. However, it deleted the italics in the passage as it originally appeared, and substituted its own italics to the phrase "making it irrelevant whether it was plaintiff's brother who procured the vehicle's coverage or plaintiff".

The *Barnes* panel justified its interpretation by pointing out that in the cases cited in *Iqbal*, at least one owner had the required insurance. Id. at 8. The panel also seized on footnote 2 of the *Iqbal* opinion to justify its narrow reading of that case. In context, that footnote reads as follows:

> "Next, the phrase 'with respect to which the security required by section 3101 . . . was not in effect,' section 3113(b), when read in proper grammatical context, defines or modifies the preceding reference to the motor vehicle involved in the accident, here, the BMW, and not the person standing in the shoes of an owner or registrant. The statutory language links the required security or insurance solely to the vehicle. Thus, the question becomes whether the BMW, and not plaintiff, had the coverage or security required by MCL 500.3101. As indicated above, the coverage mandated by MCL 500.3101(1) consists of 'personal protection insurance, property protection insurance, and residual liability insurance.'[2]"
>
> * * * *
>
> "2. **To construe MCL 500.3101(1) as requiring anything more in relation to the vehicle and in the context of its interrelationship with MCL 500.3113(b) would be problematic**. The problem is that, assuming MCL 500.3113(b), as influenced by MCL 500.3101(1), was meant to demand that each and every owner maintain insurance on a particular vehicle or lose a right to receive PIP benefits, regardless of whether the vehicle is already covered by insurance, an owner who actually obtained insurance could be denied a right to recover PIP benefits."

278 Mich App 31, 39-40 & n 2 (emphasis added).

It is patent that the *Iqbal* panel did not intend to qualify its text discussion. Rather, it sought to demonstrate the most extreme anomaly that could result from reading §3113(b) as referencing the owner or registrant, rather than simply the motor vehicle.

In sum, the text of §3113(b) requires only that there be no-fault insurance on the vehicle, regardless who purchased it. *Barnes* was simply wrongly decided. Where, as here, Plaintiff's father purchased the insurance on Plaintiff's vehicle, §3113(b) simply does not apply.

3113 "Shall Maintain"

Section 3113(b) states the owner or registrant "shall maintain" security for the payment of no fault benefits. Nowhere in the text of the statute is a requirement that the owner be the named insured. The statute merely says that the owner shall maintain the mandated

insurances on the vehicle. The statute does not define the term maintain.

This Court has explained that the role of the Court in interpreting statutory language is "ascertain the legislative intent that may reasonably be inferred from the words in his statute," *People v Couzens*, 480 Mich 240, 249; 747 NW2d 849 (2008). The focus of the Court's analysis is on the statutory express language which offers the most reliable evidence of the legislative intent, *Eadeen v Par, Inc.*, 496 Mich 75, 81; 853 NW2d 303 (2014). The word maintain is not defined in the no fault statute. Under those circumstances, the court presumes that the legislature intended for the words to have the common and ordinary meaning, MCL 3a. The Court may use a dictionary to assist in determining the ordinary meaning of relevant words, *Kooster v Charlevoix*, 488 Mich 289, 304; 795 NW2d 578 (2011).

In footnotes one[1] and two[2] the definitions of the term "maintain" from two dictionaries are supplied. The various definitions, particularly the ones most applicable to the context of the no fault statute define "maintain" as continuing, keeping in effect, cause or remain unaltered or preserve. Thus, under the statue, to maintain the no fault coverage merely means to keep that coverage in effect or to maintain the continuity of that coverage. This

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[1] Merriam-Webster Collegiate Dictionary, Eleventh Edition. "1: to keep in an existing state (as of repair, efficiency, or validity): preserve from failure or decline ⟨~ machinery⟩ 2: to sustain against opposition or danger: uphold and defend ⟨~ a position⟩ 3: to continue to preserve in: CARRY ON, KEEP UP ⟨couldn't ~ his composure⟩ 4a: to support or provide for ⟨has a family to ~⟩ b: SUSTAIN ⟨enough food to ~ life⟩ 5: to affirm in or as if in argument: ASSERT ⟨~ed that the earth is flat⟩."

[2] The new Lexicon Webster's Dictionary of the English Language, Encyclopedic Edition. Maintain. To cause to remain unaltered or unimpaired ‖ to declare to be true, valid, etc. ‖ to defend the truth, validity, etc. of ‖ to preserve against attack ‖ to provide for the needs of, to maintain a large household . . ."

Court considered similar issues in a criminal matter where the forfeiture of an automobile was dependent upon whether the defendant keeps or maintains a vehicle for drug delivery. That case was *People v Thompson*, 477 Mich 146, 730 NW2d 708(2007). In that case, the Court made reference to the Random House Webster's College Dictionary and the Court explained that kept and maintained are two terms that are commonly understood to be interchangeable both kept and maintain are words that to keep something continuing or some element of continuity. In the case before this Court, those definitions are consistent with the statutory mandate of maintaining or keeping of the no fault insurance on the vehicle in effect. In Section 500.3101(b), and MCL 500.3101(1), the legislature was mandating that no fault insurance on the vehicle be kept continuously. The language of 3101 mandating that no fault mandatory coverage be maintained merely requires that it be continued or kept in effect during the time of its use and the time of the accident. There is nothing in the express statutory language that suggests that the holder of the policy has to be an owner. The statute mandates that the owners maintain a policy in effect on the vehicle. The statute was focusing on mandating that no fault coverage for personal protection insurance, property damage and residual liability be maintained or keep in effect. That statutory mandate said nothing about requiring the owner be the named insured just that a policy be maintained on the vehicle.

Insurable Interest of a Non-Owner or Registrant

Defendant/Appellant GEICO may argue that a person insuring a motor vehicle must have the necessary, proprietary and possessory usage of a motor vehicle in order to give rise to an insurable interest in the motor vehicle. In some respects, the no fault insurance law is similar to the purchasing of health and accident insurance which are not dependent upon the

ownership of a specific motor vehicle, *Madar v League General Ins. Co.*, 152 Mich App 734, 394 NW2d 90 (1986); *Universal Underwriters Group v Allstate Ins. Co.*, 246 Mich App 713, 725-730, 635 NW2d 52 (2001). See also, *Pioneer State Mutual Ins. Co. v Titan Ins. Co.*, 252 Mich App 330, 652 NW2d 469 (2002). There is no requirement that a person have an insurable interest in a specific vehicle to qualify for no fault insurance, *Roberts v Titan Ins. Co.*, 282 Mich App 339; 764 NW2d 304 (2009), lv den'd 485 Mich 935 (2009). The reason for that, at least as far as no fault mandatory coverages are concerned injury to person or others property is what is mandated under 3101 that it must be on the vehicle to comply with the Michigan no fault law. MCL 500.3109 and 500.3101(1) mandates that the vehicle have "personal protection insurance, property protection insurance, and residual liability insurance." The statutes therefore do not mandate that the person insuring the vehicle have a property interest in the vehicle itself, not the collision or comprehensive coverage to the car are required. Rather the statute mandate that the vehicle would have the insurances to pay for no fault injuries in an accident to a person or to property or a third party injured by the vehicle. All of those coverages have to do with injury to persons or other property and liability, not replacement of vehicle. In this case before this Court, the father as an expected, contemplated user of that vehicle would have an interest in having the liability coverages and mandated coverages to avoid any personal liability they might have while driving that vehicle.

In insurance law, the concept of having to have an insurable interest when a property interest is involved is to avoid the temptation that a person may want to take out an insurance policy and then damage the property for gain if they don't have an insurable interest. The insurance "wager policies" were void in Michigan since the writings of Justice Cooley in

O'Hara v Carpenter, 23 Mich 410, 416-417 (1871). A person can't be a stranger to an auto policy. However, the financial interest that may be protected isn't necessarily the damage to the vehicle but rather the financial risk associated with the use of the vehicle either to ones self or others.

In the case of *Morrison v Secura Insurance*, 286 Mich 509, 781 NW2d 151 (2009), the mother was the owner and registrant of the motor vehicle that her daughter drove. The mother got the insurance on the vehicle. She was the named insured. Prior to the automobile accident in which the daughter was sued for injuries to the motorcyclist, the vehicle had been transferred to the daughter's name without any change in insurance. The question was whether there was a valid insurance policy in effect at the time of the accident with the mother as the named insured and the daughter was the exclusive owner and registrant of the vehicle. In a two to one decision, the Court held that because at the time of the policy, the mother was the owner or registrant that was sufficient to have an insurable interest at the time of the collision. In addition, however, the court explained that the insurable interest can be financial rather than property damage and that certainly the financial risks of the daughter where sued in an auto negligence matter may be a sufficient insurance interest. The decision was a two to one decision. The no fault policies mandate and provide a variety of coverages, including damage to the vehicle such as collision and property damage, but relevant to this claim is the no fault personal protection insurance coverage which is afforded by the policy or that is not tied to any property ownership interest, but rather to the persons own health or well being or the family member, *Madar v League Gen Ins. Co.*, 152 Mich App 734, 394 NW2d 90 (1986). Since 1981, this Court has explained that the no fault

coverage is mandated that the policy of the No Fault Act insurers persons, not motor vehicles against loss, *Lee v DAIIE*, 412 Mich 505, 315 NW2d 413 (1981). At least as to the no fault coverages buying no fault coverage for an adult child is similar to the adult putting the child on the health insurance policy of the parent. Both are merely there to provide protection for the child and presumably to provide some financial help from the parent to the child.

Furthermore, under the No Fault Act in the lower Court and in the Court of Appeals, it was argued that the father who had a long history of exchanging vehicle and vehicle use with his son would be an owner by the right of use of the vehicle. *Twichel v MIC Gen Ins. Corp.* 469 Mich 524, 503; 676 NW2d 101 (2009). In *Twichel*, the claim was that since the vehicle hadn't been driven for thirty days the purchaser would not be barred from no fault benefits as an owner of an uninsured vehicle. The Court in *Twichel* disagreed and the Court explained:

> "Like the Michigan vehicle code, MCL 500.3101(2)(g)(I), treats a person as a 'owner' of a vehicle if the person rents or has the use of the vehicle for a period greater than thirty days. It is the nature of the right to use the vehicle - whether it is contemplated that the right to use the vehicle will remain in effect for more then thirty days, that is controlling, not the actual length of time that has elapsed. *Twichel* at 620-621.

In this case, the lower Court by the wealth of deposition testimony, it was clear to the Trial Court and the Trial Court ruled as a matter of law that the father indeed was an owner of the vehicle by the right of use and based on past practices. In the Court of Appeals, the Court held that was a question of fact as to whether he was an owner by right. Also, based on the textual analysis of the no fault statute, the father who actually registered the vehicle with a Power of Attorney and presented to the Secretary of State proof of insurance, under a literal

reading would be the registrant since he indeed registered the vehicle with a Power of Attorney. The Trial Court agreed that he was a registrant. However, on appeal, in the Court of Appeals they concluded that with the Power of Attorney, he would not be considered a registrant. The one point is obviously clear that either as a concerned parent interested in protecting his financial interest of his son, or as a arguable owner or registrant of the vehicle, or an actual user of the vehicle, the father certainly had an insurable interest against financial risk.

As an expected user of the vehicle, the residual liability coverages, possible no fault coverage and optional coverages for uninsured motorist or underinsured motorist coverage all protect the father's financial interest as a user of the vehicle. Also, providing protection for his child as a family member is another financial insurance interest for a parent to protect. In short, Mr. Dye, the father may be a non-owner but not a stranger to the car or operator and he has a sufficient insurable interest to afford a basis for insuring the vehicle.

When Mr. Paul Dye, the father, paid for insurance he bought insurance and when asked in his deposition why he didn't put his son's name on the insurance policy as the named insured, Paul, the father responded:

> "I don't remember what my intention was other than to get some insurance for the car." (Paul's deposition page 38, lines 21-25, **Appendix Exhibit J**).

This statute mandates that there be insurance on the car but not necessarily that the owner be the named insured. As pointed out above, you don't need an insurable interest when you have financial interests. Whether it's financial or health concerns of the family and children or whether it's the parent is a potential user of the vehicle the liability coverages and no fault

coverage associated with that use establish a sufficient insurable interest.

This is an extremely common circumstance to have a young adult on the parents policy or have the parents obtain the policy. Whether the parent is financially supporting the child, the parent is worried that the child will miss an insurance payment or if by putting the child's car on a group of cars the family gets a better premium rate with multiple cars, this practice is extremely common for a young adult owner of the car to have insurance through the parents policy and not be a named insured. To leave *Barnes* standing will misinterpret the language on the no fault statute and create a tremendous hardship for many people doing the right thing. The parents buying no fault insurance and being told because they didn't list their child as a named insured that that child who owns the car is barred from no fault benefits and under MCL 500.3135(2)(c) would be barred from any pain and suffering recovery as uninsured owners of an uninsured vehicle. The 3113(b) merely indicates that the vehicle must have insurance maintained or the owner or registrant can be excluded from no fault coverage. The statute mandates the involved vehicle must have no fault coverage, not that the owners or registrants must be the named insureds. This statute mandates that there be insurance on the car but not necessarily as the named insured by the owner. As pointed out above, you have an insurable interest when you have financial interests, whether it's the family and children or whether it's the parent and the potential use of the vehicle and the liability coverages and the no fault coverage associated with that use.

To leave *Barnes* standing will create a tremendous hardship for many people doing the right thing buying no fault insurance and being told because they didn't list their child as a "named insured" that child who owns the car is barred from no fault benefits and treated

as an uninsured driver. *Barnes* textualism is misplaced and the consequences of that published decision are enormous. It is respectfully urged that this Court grant leave or summarily reverse the *Barnes* decision and find that this young man, Matthew Dye, who is still in an institution from his injuries and under Guardianship, be afforded the no fault coverage that his family paid for.

II.

GEICO Had by Written Admission Agreed with Plaintiff, Matthew Dye and Esurance to Provide No Fault Coverage

GEICO's agreement to provide coverage for Matt Dye is in writing and under the court rule is enforceable. The question of no fault coverage by GEICO and their priority should be enforced by the admission of liability leaving the only question of damages as to the amount of benefits owed as an issue for trial.

The Trial Court concluded that under the written agreement by GEICO by the letter to Mr. Dye's counsel and the emails to Esurance, GEICO agreed in writing to provide coverage and be the highest priority no fault insurer for the payment of no fault benefits to Matthew Dye. The publication of the *Barnes* decision later gave GEICO the idea to try to get out of their agreement to provide coverage. However with a written admission of coverage, GEICO's change of heart should not be allowed to retract the written admission to Matthew Dye and Esurance to provide no fault coverage leaving only the question of the amount of benefits for trial.

Attached as **Appendix Exhibit H**, is a letter dated September 2, 2014, signed by counsel for GEICO to Plaintiff's counsel stating:

> "Recently, GEICO accepted responsibility for first party benefits in the above referenced matter. I have requested a demand to settle this matter. As of this date I have not yet received a demand from your office. Please advise of same. . . ."

One of the allegations in the original Complaint was to determine coverage and priority between GEICO and Esurance. The Amended Complaint asked in the declaratory count that GEICO or Esurance be found to be the insurer by express admission in writing. Plaintiff-Cross/Appellant Dye argues that the question of coverage and priority were resolved by the written binding admission of GEICO's counsel. The only question remaining was no fault damages which the Trial Court ordered to be tried. In this case, the Plaintiff's Complaint included a Count for declaratory relief (Count II), for a determination of the amount and responsible insurer for the payment of no fault benefits. By the written admission of GEICO's counsel, that legal coverage issue was by admission and by agreement resolved liability. Similarly, the emails between GEICO an Esurance confirm that as to coverage and liability, GEICO would be the insurer. GEICO may have somewhat disputed the amount of damages owed to Esurance but clearly that element just as the amount of damages in Matthew Dye's claim were ordered by the Trial Court to be resolved by trial. However, the agreement and commitment for the payment of no fault benefits and the acceptance of responsibility by GEICO was provided in writing. As explained by able counsel for Esurance, a change of mind will only be set aside for fraud, mutual mistake or duress. *Streeter v Mich Consol Gas Co.*, 340 Mich 510, 517; 65 NW2d 760 (1954). The agreement as to liability is enforceable under MCR 2.507(F) since the written agreement to provide coverage and to pay no fault benefits was in writing and signed by the parties attorney. *Metropolitan Life Ins. Co. v Goolsby*, 165

Mich App 126; 418 NW2d 700 (1987). MCR 2.507(F) provides:

> "(F) **Agreements to Be in Writing**. An agreement or consent between the parties or their attorneys respecting the proceedings in an action is not binding unless it was made in open court, or unless evidence of the agreement is in writing, subscribed by the party against whom the agreement is offered or by that party's attorney."

The agreement or consent to resolve no fault coverage and priority by GEICO was resolved by agreement and is enforceable based on legal principles and construction of contracts. *Eaton County Co. Rd. Comm'rs v Schultz*, 205 Mich App 371, 379; 521 NW2d 847 (1994), a stipulation in court proceedings and particularly stipulations of fact are binding. *Dana Corp. v Emp. Security Comm.*, 371 Mich 107, 110, 123 NW2d 277 (1963). An important concept in litigation is that the parties can, through their lawyers, agree in writing or in open court to resolve some issues and focus on the remaining issues between the parties. Here, in the September 2, 2014 letter, GEICO accepted responsibility for first party benefits to Mr. Matthew Dye. The stipulation and admission of fact is binding and enforceable. The written stipulation simply avoids further development and argument on the issues of coverage and priority. It is only after the *Barnes* decision becomes a published decision having originally been issued as an unpublished Opinion in July that suddenly GEICO in November of 2014 decided to contest coverage. It is respectfully urged that given the agreement of the parties under the applicable court rules that the issue of no fault coverage and the responsibility for payment by GEICO had been resolved by the admission. The contract count of the Complaint and the declaratory judgment portion of the Complaint seeking a decision as to no fault coverage and the determination of the appropriate insurer was resolved by GEICO in writing. The Trial Court Order of Summary Judgment found that

GEICO had a binding agreement by their admission to provide coverage and that GEICO was the insurer with the highest priority under MCL 500.3114(1) as the insurer of the spouse of Matthew Dye. The Trial Court properly concluded that the agreement by GEICO to provide coverage and be the highest priority was enforceable and properly so ruled. The Trial Court Order provided a trial only as to damages.

In the Court of Appeals, the Court exclusively analyzed GEICO's correspondence agreeing with Mr. Dye and Esurance's counsel that they were the no fault insurer as a contract analysis to determine whether an agreement was reached. However, the court rule specifically provides that instead of an agreement, admissions between the parties or their attorneys regarding the proceedings in an action are enforceable if it is in writing or in open court. This argument was raised in the Court of Appeals by Matthew Dye's counsel that GEICO's letter admitting coverage resolved the issues of coverage as to who was the insurer. The Trial Court properly recognized that GEICO's writings were sufficient written admission and ordered the matter to proceed to trial as to damages. As a trial attorney, if the opposing party stipulates or agrees that a certain issue or fact is not disputed as the opposing attorney. The opposing party may rely on that admission and dispense with any further proofs as to that topic. For example, in an auto negligence trial if the defense counsel sends a written letter providing that they are not going to contest liability for the accident, the opposing counsel can rely on that written admission and dispense from preparing proofs on that issue. The court rule contemplates that an admission if in writing or in open court is enforceable. Here, GEICO agreed in writing that they were the no fault insurer for the payment of no fault benefits to Matthew Dye. The Trial Court held that was a binding admission and that the matter would

proceed to trial only as to damages.

My excellent fellow counsel for Esurance amply cites the law on agreements. However, they try to include within the argument the question of damages. If you agree with the Court of Appeals that there wasn't a meeting of the minds as to the amount of damages, there still is the written admission by GEICO that they are the responsible no fault insurer and that written agreement on the coverage element of the proceeding is binding and enforceable under the above court rule. The Trial Court so held and it is respectfully urged that a trial as to damages based on their admission of coverage should be enforceable.

On the question of admission and disposal of one issue in the case the Court of Appeals did not respond in their Opinion to that issue except to say there was not a final agreement and a meeting of minds in the materials exchanged between Esurance and GEICO. Plaintiff had raised the argument that GEICO's writings was a binding admission of coverage in the case that was enforceable under the court rule and the Trial Court so held.

CONCLUSION AND RELIEF REQUESTED

It is respectfully urged that the Court of Appeals in finding no agreement ignored the fact that there was an admission of liability by GEICO in writing and under court rule that was an enforceable admission. It is respectfully urged that the Court of Appeals finding of no agreement was in error and that this Court grant leave on the *Barnes* statutory misinterpretation and admission issue or summary reverse the Court of Appeals and remand to the Trial Court as to damages only.

Dated: June 12, 2017

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CERTIFICATE OF SERVICE

I hereby certify that on *June 12, 2017*, I electronically filed the Application for Leave to Appeal by Cross Appellant, Plaintiff/Appellee Matthew Dye, by his Guardian, Siporin & Associates, Inc., Notice of Filing Supreme Court Application and Appendix of Exhibits with the Clerk of the Court using the TrueFiling system which will send notification of such filing to the following: Drew W. Broaddus, Christina A. Ginter, Sarah L. Walburn, Susan Healy Zitterman, Marcy A. Tayler, Jesse A. Zapczynski, and by regular mail to Leo A. Nouhan.

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STATE OF MICHIGAN

MICHIGAN SUPREME COURT

MATTHEW DYE, by his Guardian SIPORIN & ASSOCIATES, INC.,

Plaintiff-Appellee,

-vs-

PRIORITY HEALTH,

Defendant/Cross Plaintiff-Appellee,

-vs-

GEICO INDEMNITY COMPANY,

Defendant/Cross-Defendant-Appellant,

and

ESURANCE PROPERTY & CASUALTY INSURANCE COMPANY,

Defendant/Cross Defendant-Appellee,

-and-

BLUE CROSS BLUE SHIELD OF MICHIGAN

Defendant-Appellee.

Supreme Court No. 155784

COA Docket No. 330308

Lower Court No. 14-516-NF

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PLEASE TAKE NOTICE that Plaintiff has filed an Application for Leave to Appeal to the Michigan Supreme Court for a peremptory order of reversal of the Michigan Court of Appeals Opinion dated April 4, 2017, or in the alternative, that the Michigan Supreme Court grant Application for Leave to Appeal.

Dated: June 12, 2017

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PLAINTIFF-APPELLEE/CROSS PLAINTIFF-APPELLANT APPENDIX OF EXHIBITS

Exhibit

APPENDIX EXHIBIT A	*Dye v Esurance Property and Casualty Ins. Co.,*
APPENDIX EXHIBIT B	*Barnes v Farmers Ins. Exchange*,
APPENDIX EXHIBIT C	*Beaudette v Auto-Owners Ins. Co.*,
APPENDIX EXHIBIT D	*Iqbal v Bristol West Ins. Co.,*
APPENDIX EXHIBIT E	Order of Trial Judge Granting Summary Judgment in Part, Order to Trial as to Damages and Motion for Summary Disposition Transcript
APPENDIX EXHIBIT F	MCL 500.3113(b)
APPENDIX EXHIBIT G	MCL 500.3101
APPENDIX EXHIBIT H	Admission letter of GEICO Attorney regarding coverage and communication between GEICO's counsel and Esurance regarding the settlement prior to te issuance of the *Barnes* decision
APPENDIX EXHIBIT I	Secretary of State Registration Papers for Vehicle
APPENDIX EXHIBIT J	Deposition Paul Dye
APPENDIX EXHIBIT K	Deposition Matthew Dye
APPENDIX EXHIBIT L	Deposition Lisa Dye